

# The Homeowner's Guide to the Home Building Act

The Home Building Act 1989 (NSW) is a piece of legislation that governs residential building work and specialist work in New South Wales. It sets out the rights and obligations of Builders, homeowners, and other stakeholders in the construction process. The Act is designed to protect homeowners from non-compliant workmanship, defects, and non-completion of work. The NSW Government has tried to strike a balance between protecting owners consumer rights as well as balancing the majority of industry suppliers being small and medium sized businesses.

## Home Building Contracts

One of the most important aspects of the Home Building Act 1989 (NSW) is the requirement for a valid home building contract. A home building contract is a legally binding agreement between a Builder and a homeowner that sets out the scope of work, the materials to be used, and the price for the work.

Under the Home Building Act, a home building contract must include certain information, such as the names and addresses of the parties, the scope of work, the price for the work, and the completion date. If the contract price exceeds the prescribed amount, then the contract must also include a copy of the Home Building Compensation Fund certificate, which is a form of insurance that protects homeowners for defects or non-completion of work if the Builders fails to comply with an NSW Civil and Administrative Tribunal Order or an administrator or liquidator is appointed to the company.

Section 7 of the Act prescribes some of the requirements of a home building contract with a contract price \$20,000.00 or more. These contracts are referred to as (other than small jobs) under the Home Building Act.

Section 7AAA of the Act prescribes the requirements of a home building contract where the contract price is between \$5,000.00 and less than \$20,000.00. These are referred to as Small Jobs under the Act.

It's important for the homeowner to understand their rights and obligations under the contract. They have the right to receive a copy of the contract under section 7B of the Act and a copy of the Home Building Compensation Fund certificate under sections 92 and 94 if the Act before any work begins.

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## Home Warranty Insurance (Home Building Compensation Fund Insurance)

Another important aspect of the Home Building Act 1989 (NSW) is the requirement for Builders to provide their client homeowner, home warranty insurance, known as Home Building Compensation Fund Insurance. Home warranty insurance is a form of insurance that insures homeowners in the event of defects or non-completion of work. It covers the cost of rectifying any defects that occur within the first six years after the completion of the work, and it also covers the cost of completing any work that is not finished by the Builders. The insurance has policy specific limitations but a common limit is insurance payments are limited to \$340,000.00.

All Builders in New South Wales are required to provide home warranty insurance for all residential building work that is \$20,000.00 or more. If there are multiple contracts then the total of the value of the contracts is to be calculated. The insurance must be in place before any work begins, and a copy of the insurance certificate must be provided to the owner prior to work commencing. Under section 94 of the Act, Builders are not entitled to payment under their contract if insurance is not affected. This is known as uninsured work. Where there is uninsured work, Builders are limited to claim the value of works performed on a Quantum Meruit basis if a court or tribunal considers it just and equitable.

## Building Dispute Resolution

### Step 1

If a dispute arises between the owner and the Builder, the Home Building Act NSW provides a process for resolving the dispute. The first step is for the parties to try to resolve the building dispute themselves pursuant to the terms of their specific building contract. Often, there is negotiation or mediation between the parties if the terms of the contract are not clear or cannot be complied with.

### Step 2

If the parties are unable to reach an agreement, they can lodge a complaint with the NSW Office of Fair Trading (Fair Trading). Other than contractual disputes, the Fair Trading office tries to assist the parties by appointing a Fair Trading Inspector. The Inspector has powers to make orders under the Act.

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### Step 3

If either of the contracting parties disagrees with the Fair Trading Inspector's orders, then that person can lodge an application with the NSW Civil and Administrative Tribunal, commonly known as the NCAT.

### Step 4

The NCAT is chiefly responsible for resolving building claims for residential building disputes in NSW. The NCAT has broad jurisdiction under Section 48O of the Act to resolve contract disputes.

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The Fund can provide financial assistance to homeowners to rectify defects or incomplete work if an insurable event is triggered. Examples of these are:

1. if the NCAT makes a money order that the Builder does not comply with;
2. the Builder appoints an administrator or liquidator to the building company; or
3. the Builder is missing, dies, or becomes bankrupt.

## 25 Tips for Homeowners Before They Build

### **Helpful tips for homeowners to protect their rights under the Home Building Act:**

1. Understand your rights and obligations under the Home Building Act 1989 (NSW) before entering into a contract with a Builder.
2. Make sure you have a valid home building contract that includes all the necessary information, such as the scope of work, price, and completion date. The fairest residential building contracts template for works in NSW is made by the Fair Trading known as Home Building contract for work over \$20000 - Fair Trading and Home Building Contract for work over \$5,000 and up to \$20,000.
3. Ask for and obtain a copy of the Home Building Compensation Fund certificate before any work begins, and make sure the Builder has insurance in place.
4. Make sure you receive regular progress reports on the work, and arrange for a final inspection before final payment is made.

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5. Understand the dispute resolution process under the Act and know your options if a dispute arises.
6. Research and choose a reputable Builder who has a good track record and appropriate qualifications. You should inspect the Office of Fair Trading contractor licence check website for basic due diligence of the Builder.
7. Don't rush into signing a contract or making payments, take the time to review the details and ask questions if anything is not clear.
8. Keep detailed records of the work done, including photographs and receipts, in case issues arise in the future.
9. Engage a local construction lawyer in Sydney to review your contract and advise you on any legal issues that arise from the build.
10. Get multiple quotes and compare prices and services before making a decision.
11. Make sure you understand the payment schedule and terms, and avoid paying more than 10% exclusive of GST prior to receiving the HBCF insurance policy.
12. Check the Builder's references and ask to see examples of their previous work and speak with their current clients.
13. Understand the process for making variations to the works, and the potential impact on the price and completion date.
14. Inspect the works at key stages of the construction process, such as the slab works, frame stage, and lock up stage works to ensure that everything is complete and compliant.
15. Understand the building codes and regulations that apply to your project, and make sure the Builder is aware of them as well. As well as a construction lawyer, you should engage a building consultant to review your contract and provide advice whenever you have a technical query.
16. Ensure your build time allows for delay and contingencies outside of the Builders's control, like weather or material delays, that could affect the completion date.
17. Hire a building inspector to conduct regular inspections throughout the construction process to ensure that everything is being done to code. Understand the Builder's process for handling any necessary inspections, and who is responsible for coordinating them.
18. With assistance from your construction lawyer and building consultant, ensure the contract includes a detailed list of the materials and products to be used in the project, and ask for warranties for each.
19. Be prepared to walk away if you are not comfortable with the Builder or the terms of the contract. Always prioritise your own safety and well-being, and if you have any doubts about the Builder or the project, it is best to move on to another option.

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20. Make sure that all necessary permits, approvals, and certificates have been obtained before the work begins. Contact the local council to ensure your Builder has provided you with all documentation and the council has approved the build. It is best to make the Builder responsible for all approvals.
21. Understand the Builder's process for handling any necessary permits and approvals, and who is responsible for obtaining them.
22. Be aware of any zoning or neighbourhood restrictions that may affect the project. Have your building consultant effect a dilapidation report prior to any works being performed on site.
23. Keep a detailed record of all correspondence and communication with the Builder, including emails, text messages, and phone calls. You can use a document management system like Make My Affidavit.
24. Understand the process for making changes or additions (variations) to the project. Be sure not to consent to any Variations other than in accordance with the contract.
25. Understand the Builders's process for handling any necessary repairs or maintenance after the project is completed.

### **3 Bonus Tips for Homeowners in NSW**

1. Understand the process for finalising the project and the Builder's process for providing any necessary documentation, such as a certificate of occupancy.
2. Make sure that the Builder has a clear understanding of your vision and expectations for the project.
3. Understand the process for making final payments, and be sure to include any contingencies or holdbacks in the contract.

For most people, building their dream home is the biggest investment of their lives. Homeowners in New South Wales should get advice from a construction lawyer, building consultant, and financial planner to help manage their risks and bring their dream to reality.

Take control of your residential building project with the help of our construction lawyer. Our expert construction lawyer can help you protect your investment and make sure your project is completed to your satisfaction by reviewing your home building contract and giving you advice on how to settle a dispute. Don't leave your dream home to chance; contact our construction lawyer today to get the legal support you need.

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